

**Statement of Karl A. Racine
Attorney General for the District of Columbia**

Before the

**Committee on the Judiciary and Public Safety
Charles Allen, Chairperson**

**Office of the Attorney General
Performance Oversight Hearing
FY 2016 to FY 2017**



February 16, 2017

**12:00 pm
Room 123
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, District of Columbia**

Good morning Chairman Allen, Councilmembers, staff, and residents. I am Karl A. Racine, and since January 2, 2015, I have had the privilege of serving as Attorney General for the District of Columbia. While the time has certainly gone by quickly, it is important to underscore that the Office of the Attorney General (OAG) has only been independent, charged with a mandate to follow the public interest, and led by an elected Attorney General, for just over two years. During those two years, OAG has committed itself to being engaged with the residents of the District of Columbia, and using the law to positively impact people's lives. For this reason, I am honored to have this opportunity to report on the activities and accomplishments of the Office of the Attorney General for Fiscal Year 2016 and Fiscal Year 2017 to date. I want to publicly congratulate you on your chairmanship of the Committee on the Judiciary and Public Safety (Committee) for Council Period 22. Moreover, I want to thank you and your staff for taking the time to visit with our office on February 1 to better understand the important work of the exceptional attorneys and staff at OAG. During that visit, OAG explained that the office provides a huge return for every dollar invested. OAG's approved budget for FY 2017 is \$91.7 million. As I will touch on in greater detail throughout my testimony, OAG attorneys and staff accounted for well over \$500 million in savings and revenue for the District this past year. Since entering office, OAG has returned over \$6.5 million in restitution to consumers through mediation and enforcement actions and approximately \$100 million in payments to the District's treasury from OAG consumer protection actions. Furthermore, I am pleased to report that OAG has returned approximately \$15 million from affirmative settlements

recovered from false claims, non-resident tuition fraud, and other such claims. OAG's Commercial Division has saved the District over \$200 million in defense of total real property taxes collected over these past two years and OAG has collected approximately \$4 million in program fees for bond issuances. As both the Committee and public will learn, thanks to our partners on the Council – with a special thanks to our former Committee Chair Kenyan McDuffie and Council Chairman Phil Mendelson – we are aggressively building upon a culture within OAG to advance our primary duties to uphold the public interest and provide independent and objective legal counsel to the Mayor, Council, and District agencies. In fact, with your continued support OAG is well on its way to being the best public law office in the country.

I will submit my full written testimony along with OAG's Two Year Report titled, "In the Public Interest: Attorney General's Midterm Report" for the public record. In the interest of time, I will read a summarized version to allow for more time to respond to your questions. My testimony will consist of three parts. First, I will highlight the exemplary work of our attorneys and support staff from each of our divisions and offices. Second, I want to update the Council on several major legislative and community engagement initiatives. And, finally, I will take some time to share some of OAG's specific initiatives and priorities.

I. Office of the Attorney General Divisions Report

As you know, OAG is currently comprised of 11 Divisions/Offices. I will touch on each.

Public Safety Division

OAG's Public Safety Division (PSD) prosecutes all of the District's juvenile cases as well as certain misdemeanor adult cases. In FY 2016 and FY 2017 (to date), our Juvenile Section had processed approximately 3,900 cases in Family Court. The Criminal Section handles some 12,000 adult cases per year—including cases involving impaired driving, weapons violations, and other crimes. PSD also assists victims of crimes and has the responsibility of protecting some of the District's most vulnerable citizens: victims of domestic violence; adults who are being abused, neglected, and exploited; and mentally ill adults who need emergency psychiatric care. The Division continues to work to raise the quality of life in the District.

Public Safety Division Highlights

- OAG entered into an agreement with the United States Attorney's Office for the District of Columbia (USAO) and the Executive Office of the Mayor (EOM) to send Assistant Attorneys General to USAO on detailed assignments in an effort to combat violent crime. The purpose of this partnership between EOM, USAO, and OAG is to further the District of Columbia's comprehensive public safety agenda by using a multi-agency approach to prevent violent crime. OAG prosecutors will help build capacity for USAO for the prosecution of repeat violent offenders and the protection of the District's residents and neighborhoods. This partnership also further enhances the cooperation and collaboration between OAG and USAO in their efforts to enforce the criminal laws of the District of Columbia and respond to the public safety needs of the community.
- OAG's Criminal Section created a new partnership with the Superior Court Drug Intervention Program (Drug Court). This new partnership provides OAG with more rehabilitative services for defendants with pending OAG criminal charges who have substance abuse issues. Eligible referrals to Drug Court must complete treatment plans determined by the Pretrial Services Agency, including inpatient and six-month intensive outpatient treatment, to successfully graduate from the program. OAG factors in a participant's compliance with Drug Court to make a final determination for sentencing.
- The Criminal Section launched a new educational program to help make District of Columbia streets and our youth safer. A first-time DUI offender with medical training agreed to write a curriculum designed to educate college students about alcohol use and converted this creative disposition into a new program called "Sobriety Check." This innovative community-outreach program, aimed at high school students and incoming college freshmen, alerts youth to the consequences of abusing alcohol and drugs and includes a "Jeopardy"-like game that tests students on the information learned throughout

the program. OAG recently launched the Sobriety Check program at Howard University and will be presenting it at several other high schools, colleges, and universities in the District of Columbia in the upcoming months.

- Because juvenile justice reform has been a top priority for OAG, the Juvenile Section has increased its rate of diversion of low-risk youth to the Alternatives to Court Experience (ACE) diversion program operated by the Department of Human Services (DHS). These diverted youth receive substantial rehabilitative care and services, including mental health treatment, family therapy, mentoring, and substance abuse treatment, all of which are recognized services that keep youth out of trouble. OAG is actively monitoring the outcomes of the youth who have been diverted, and as of December 2016, youth who completed the ACE diversion program have had an extremely high 80% success rate for non-recidivism. Mr. Chairman, as you consider how best to advance public safety, I urge you to invest in programs like ACE that have a proven track record of turning young people away from a life of crime.
- OAG created a Restorative Justice Program within the Public Safety Division. A Restorative Justice Conference brings together the parties impacted by a crime in a facilitated discussion about the harm caused by the offender, the impact that harm had on all involved, and what the offender needs to do to repair the harm and ensure that it does not happen again. Participants in the Restorative Justice Conference include the victim of the crime, the youth who caused the harm, and family and support people for each of them. Individual Juvenile Section prosecutors refer cases for Restorative Justice Conferencing where the victim of the crime is amenable. Once a case is referred for Restorative Justice, a trained and certified OAG Restorative Justice facilitator reaches out to all parties impacted by the crime, facilitates the Restorative Justice Conference, and then monitors compliance with all the terms of agreement come to at the Conference.
- FY2016 was the inaugural year of the Juvenile Specialty Court Unit (JSCU). PSD established JSCU to more comprehensively focus on possible solutions to the District's truancy, runaway, and human trafficking problems. To that end, JSCU developed three initiatives during FY2016. In June 2016, JSCU created the T.R.I.A.G.E. Diversion Program (Truancy Reduction Initiative and Gateway to Empowerment). T.R.I.A.G.E. is a non-funded partnership between OAG and the Department of Human Services (DHS). An Assistant Attorney General reviews a truancy referral for legal sufficiency. DHS co-located two Family Functional Therapist (FFT) to JSCU to review the cases and assess the level of intervention appropriate to abate the truancy. From July 1, 2016 through September 30, 2016, TRIAGE handled 122 cases with outcomes ranging from only mentoring/tutoring needed in 4% of cases; connecting youth to the voluntary, early intervention Parents and Adolescents Support Services program (PASS) in 47% of cases; and linking youth to ACE in 15% of cases.¹ OAG supports expanding this initiative with funding for at least two full time FFT positions and one full time support professional.

¹ The remaining cases are split between no additional intervention (already linked, graduated or in Child and Family Services Agency care) or unable to contact the family.

- In August 2016, JSCU submitted a proposal to Family Court of Superior Court of the District of Columbia to revamp the Truancy Court response to both truant and runaway youth. Those cases which require a court response are fast tracked with a referral to the mental health court -- Juvenile Behavioral Diversion Program at the time of petitioning. The Department of Behavioral Health immediately informs the partner agencies whether a youth is already linked to its system and the Court Social Services Division, at the initial hearing, assesses whether the youth has an indicator for mental health services or human trafficking vulnerability. This allows the Court Social Services Division to develop an appropriate treatment plan and link youth and their families to services as soon as practicable with the hope that they can exit the juvenile justice system swiftly. JSCU will continue to work with the Family Court to connect truant and runaway youth to services earlier in the process and reward them with a case dismissal or consent decree upon successful completion of an identified treatment plan.
- The Mental Health Section began an initiative to educate the public on the civil commitment process, and on how to obtain mental health treatment for individuals who are willing to accept treatment, as well as for individuals who are refusing treatment and without treatment may be likely to injure themselves or others. To achieve this initiative, the Mental Health Section conducted trainings and informational sessions at community-based organizations, area hospitals, and community events. The Section also conducted informational panel sessions facilitated by the Attorney General or his designee within the community.
- The Domestic Violence Section continues to support community efforts to combat elder abuse. Through its participation in the District's Collaborative Training & Response for Older Victims (DC TROV), the section led three training sessions on elder abuse in July 2016. Two were advanced training for MPD detectives and one was for community agencies. Through its participation in the Office on Aging's Elder Abuse Prevention Committee, the section also presented "Money Smart" training to seniors in Ward 8 in September. Money Smart is a training developed jointly by the Federal Deposit Insurance Corporation (FDIC) and the Consumer Financial Protection Bureau (CFPB) to raise awareness among older adults and their caregivers on how to prevent elder financial exploitation and to encourage advance planning and informed financial decision-making. In addition, in November 2016, the Section appeared jointly in a radio interview with the Attorney General and the Office of Consumer Protection to discuss protecting seniors from elder abuse and exploitation.

Public Interest Division

The Public Interest Division (PID) represents the District of Columbia in challenges to the government's authority to act in the best interests of its citizens. PID prosecutes on behalf of

and defends the District of Columbia, its agencies, and its officials in a variety of civil and administrative actions brought by and against the District.

Public Interest Division Highlights

- As part of its ongoing mission to recover monies owed to the District of Columbia, in FY 2016, the Civil Enforcement Section (CES) recovered over \$4 million for the District. Approximately \$3 million consisted of Medicaid benefits owed to the District. OAG also recovered approximately \$135,000 from individuals who unlawfully received unemployment benefits from the District's Department of Employment Services Unemployment Compensation Program.
- Additionally, as part of its mission to assist in protecting the District's citizens, CES worked in FY 2016 with the Metropolitan Police Department and the Alcoholic Beverage Regulation Administration to temporarily close five District nightclubs where violence erupted, including one incident involving a fatality. Once the nightclubs were closed, CES attorneys worked with the nightclubs' ownership and management to develop or enhance their security plans so that the clubs could re-open with a safe environment for patrons.
- PID's Equity Section regularly defends the District's laws against legal challenges. As an example, in *Robinson v. District of Columbia*, Equity successfully defended the District's prohibition on possession of an open container of alcohol (POCA) against constitutional challenge. Granting the District's motion to dismiss, the court in *Robinson* found that the POCA law was sufficiently clear and reasonable in its purpose to satisfy Due Process.
- PID's Equity Section also successfully concluded *Evans v. Bowser*, a class action lawsuit filed to remedy the constitutionally deficient level of care, treatment, education, and training provided to residents of Forest Haven, which was then the District's institution for people with developmental disabilities. The District earned dismissal by closing Forest Haven and developing a quality support services delivery system for District residents with intellectual and developmental disabilities. The *Evans* case was the longest-standing lawsuit of its kind in U.S. history.
- Just last week, OAG, along with the Attorneys General of several states and the United States Department of Justice, successfully enjoined the proposed \$37 billion dollar merger between Aetna, Inc. and Humana, Inc. The lawsuit alleged that the merger would raise prices and decrease consumer choice in the market for individual Medicare Advantage plans. OAG joined this suit (and also filed to enjoin the \$54 billion Anthem-Cigna merger) to stop a wave of consolidation in the health insurance industry that would result in more expensive and lower quality health insurance products for District consumers.
- In *Balfour Beatty Construction DC, LLC v. DSLBD*, CES successfully obtained a ruling from the District's Office of Administrative Hearings (OAH) that Balfour DC, a single-

member limited liability company, whose sole owner is Balfour Beatty Construction, LLC, a global construction and engineering company headquartered in Dallas, Texas, failed to qualify as a Local Business Enterprise under the District's Certified Business Enterprise (CBE) program, which seeks to give contracting and procurement preferences to local businesses. OAG persuaded OAH that Balfour DC could not establish entitlement to CBE certification because its highest level management performed their managerial duties in Texas, rather than in the District. This result preserves the important purposes of the CBE program, encouraging small, local and disadvantaged businesses to benefit from District construction contracts.

- In *District of Columbia v. Digi Media Communications LLC*, OAG filed suit against a digital sign company and multiple building owners who were installing large electric monitors on buildings throughout the District without obtaining the requisite permits from the Department of Consumer and Regulatory Affairs (DCRA) and in violation of multiple Stop Work Orders issued by DCRA. OAG obtained a preliminary injunction against the defendants, prohibiting them from installing any additional signs during the pendency of the lawsuit.
- OAG secured a \$13 million settlement from Bank of America in *District of Columbia v. Bank of America*. In this lawsuit, OAG sued to recover money embezzled by a District employee from a bank account maintained by the District at Bank of America between September 2000 and September 2008. OAG advanced claims of Uniform Commercial Code (UCC) violations and fraud.
- As part of OAG's lawsuit against the owners of the Park Southern Apartments, Park Southern was sold, and critically needed rehabilitation of the property for the benefit of the residents is set to begin. The Court appointed a custodian to oversee the sale of Park Southern and ordered Court-supervised elections to resolve management issues alleged by OAG. These remedies resulted in the sale of Park Southern to PSRC, the tenant organization at the property, which partnered with a developer to buy the property and fund repairs and improvements. The goal of the new ownership is to restore Park Southern to a property providing up to 360 units of quality affordable housing for low-income residents. Park Southern residents, through the tenant organization, retain an ownership interest in Park Southern and will retain a voice in the improvements and management of the property.

Civil Litigation Division

The Civil Litigation Division (CLD) defends the District of Columbia, its officials, and its employees in a broad spectrum of civil litigation. CLD has primary responsibility for representing the District of Columbia in hundreds of civil lawsuits that seek monetary damages. These lawsuits include claims of employment discrimination, constitutional torts, and personal

injury. In these cases, CLD attorneys appear in the local and federal courts before judges and juries. Many of our civil litigation cases are still active at either the trial or appeal stage.

Therefore, to preserve confidentiality and privilege, examples of our successes in specific cases are not included in this submission.

Civil Litigation Division Highlights

- In FY 16 and FY 17 to date, CLD continues to handle approximately 600 civil litigation matters at any given time. In FY 2016, CLD won 107 of the 120 cases that were decided on motion or at trial, a success rate of 89 percent. From the beginning of FY 2017 through the end of January 2017, CLD has won 21 of the 22 cases that were resolved by trial or dispositive motion, representing a 95% success rate.
- The successes of our defensive litigation are evident not only in win-loss statistics, but also in terms of dollars saved for the District. In FY 2016, CLD resolved hundreds of suits where the total adjusted demand against the District was approximately \$442 million.² As a result of motions, settlements, and trials, these actions were resolved for approximately \$72,601,000 (of which approximately \$52,983,000 was incurred in settling five cases brought under the District's Unjust Imprisonment Act), resulting in claimed liability avoided of approximately \$370,000,000 in the last fiscal year. In FY 2017 to date (through February 7, 2017), CLD has resolved suits that demanded a total of approximately \$39,828,000. As a result of settlements, motions, and trials, these actions have been resolved for approximately \$4,187,000 million, resulting in claimed liability avoided of approximately \$35,640,000 to date in the current fiscal year.

Although justice cannot be measured in terms of dollars and cents, it should be clear from the record that OAG's defense of the District results in significant cost savings for District taxpayers.

Commercial Division

The Commercial Division provides comprehensive legal advice and transactional support in core areas of community and economic development, real estate, property acquisition, procurement, tax and finance, bankruptcy, land use, and public works. This broad portfolio

² The actual total amount demanded was approximately \$5.2 billion, but the \$5.2 billion amount includes fifteen highly inflated demands that did not, in our view, present a substantial threat of liability. When these demands were disregarded, the total adjusted amount claimed is approximately \$442 million.

means that the Division provides critical assistance to District officials and agencies at virtually every stage of major government projects.

Commercial Division Highlights

- The Commercial Division's Tax and Finance Section worked to retain \$64,787,120 against real property tax assessment refund claims; collected \$2,416,000 Public Financing Administrative Program Fees; successfully closed 300 Real Property Tax Assessment Court cases; and has been able to reduce its tax sale foreclosure caseload from 3,500 in FY 2014 to under 1,000. OAG was able to employ two temporary attorneys (who are now full time employees) in the Tax and Finance Section, which resulted in an additional \$13.5 million in tax refund savings for the District.
- The Division continued to litigate the issue of just compensation in the eminent domain case to complete the assemblage of property to support the District's soccer stadium project. Commercial Division efforts in this litigation are directed toward saving the District as much as \$21.4 million in land acquisition costs for the project. The project will involve the construction and operation of a soccer stadium complex and the accompanying infrastructure, including parking, office, and transportation facilities, in order to promote the recreation, entertainment, and enjoyment of the public. The project will also promote economic development in the Buzzard Point and Capitol Riverfront neighborhoods and enhance economic vitality in the District of Columbia.
- The Division defended a class action lawsuit challenging the District's tax-lien foreclosure statute in *Coleman v. the District of Columbia*. The plaintiffs had alleged damages of over \$11 million for more than 56 class members, and sought a declaration that the District's statute was unconstitutional. After more than three years of litigation, the Division was able to settle the case for \$1 million for 11 class members. The settlement avoided any adverse ruling concerning the constitutionality of the District's ongoing tax-lien system, and it provided fairness to taxpayers, like Mr. Coleman, who lost equity in their homes.
- In FY 2016, the work of the Commercial Division's Bankruptcy Section resulted in collections of \$1,502,743 in sales, corporate franchise, and individual income taxes by the Office of Tax and Revenue; and in determinations of nondischargeability of \$94,438 of unemployment compensation overpayments by the Department of Employment Services that were made due to fraud.
- The Commercial Division provided legal advice and crucial documents to the Office of Planning, the Office of Zoning, and the Zoning Commission that enabled an entirely new set of zoning regulations to become effective on September 6, 2016. The transition to new regulations has gone more smoothly than anticipated given the magnitude of the changes.
- The Commercial Division has also been working with the Department of Transportation on the District PLUG project, a multi-year, \$1 billion power-line-undergrounding project

to help prevent prolonged electric service outages during significant weather events, and the RFQ that will be issued as part of the H Street, N.E. Bridge Design-Build Project. In addition, the Division has been providing advice on the proper structure for the next Information Technology System Argumentation solicitation and the administration of the District's health and human services access contract.

- The Commercial Division won the trial of *CHH Capital Hotel Partners, LP v. District of Columbia*, to sustain the District's \$113 million Real Property Tax Assessment of the Capital Hilton Hotel.

Personnel, Labor, and Employment Division

The Personnel, Labor, and Employment Division (PLED) defends agencies in personnel-related matters such as suspensions, terminations for employee misconduct, and reductions-in-force in evidentiary hearings before the Office of Employee Appeals, Police Adverse Action Panels, and Fire Trial Boards. PLED also represents agencies in disability compensation matters where claims for disability benefits have been denied or terminated before the Office of Hearings and Adjudication of the Department of Employment Services. In addition, PLED is responsible for OAG's Hiring and Recruitment Program, Equal Employment and Diversity Program, training and professional development, and Summer Intern Program.

Personnel, Labor and Employment Division Highlights

- The Personnel and Labor Relations Section (PLRS) opened 308 new cases in FY 16 and has opened 132 new cases in FY 17 to date.
- In two separate matters, PLRS successfully defended cases that had been pending for approximately 10 years, saving the District over a million dollars in back pay and benefits. PLRS further saved the District a sizeable amount in attorney's fees by successfully arguing to the Superior Court of the District of Columbia that it had no statutory jurisdiction to award attorney's fees in appeals from Office of Employee Appeals decisions.
- In light of OAG's commitment to fairness and diversity in the workplace, PLED made sensitivity and cultural awareness training available to all OAG employees, raising awareness of implicit biases and teaching strategies for dealing with those biases.

Family Services Division

The Family Services Division (FSD) works on behalf of the District's most vulnerable citizens: abused and neglected children. FSD works closely with the courts, social workers, and other District agencies to ensure the health, safety, and welfare of children in the District.

Family Services Division Highlights

- FSD continues to successfully prosecute abuse and neglect cases in the District, with a success rate of 99.4 percent. Protecting children is one of OAG's core purposes. It is imperative that OAG vigorously prosecutes these cases, and that we work with our partner agencies to monitor the success and outcomes of the young people we are charged with protecting.
- In addition to successfully prosecuting child abuse and neglect cases, FSD attorneys worked collaboratively with Child and Family Services Agency (CFSA) and the Family Court of the Superior Court to ensure that children were moving towards permanency expeditiously. FSD attorneys took legal action within 45 days of a goal change to adoption in 98.7% of applicable cases.
- FSD continued its collaboration with the Office of the State Superintendent (OSSE) to provide training on mandatory reporting to educators in the District of Columbia. This is a partnership with CFSA, the Metropolitan Police Department, the United States Attorneys' Office and OAG's Public Safety Division. The training is offered on a bi-monthly basis throughout the school year and provides valuable information to teachers and school professionals regarding the warning signs of child abuse and neglect.
- FSD, in partnership with OAG's Public Safety Division and Office of Community Engagement, continued its work on raising awareness about human trafficking. FSD sits on several committees and is involved in various initiatives aimed at identifying youth in the delinquency, truancy, and abuse and neglect systems who may be victims of sex trafficking. FSD participated in monthly case-review meetings on human trafficking with other District government agencies that serve youth in the juvenile justice and child protection systems, coordinated training for practitioners in the Family Court, developed a poster aimed at raising awareness about the dynamics of human and sex trafficking that will be displayed in recreation centers, group homes, and other locations frequented by city youth, and visited schools to present directly to youth.

Child Support Services Division

The Child Support Services Division (CSSD) handles child support cases involving District children by locating absent parents, establishing parentage, establishing support orders, and

establishing medical support. CSSD is also tasked with enforcing court-ordered child support payments and medical support and collecting child and spousal support payments.

Child Support Services Division Highlights

- In FY 2016, CSSD increased its share of cases with orders to 73%, a two percent increase over the prior year. Child support cannot be collected without an order in place, making progress on this metric particularly noteworthy.
- CSSD successfully implemented revisions to the guideline used in court to establish child support order levels. CSSD reprogrammed the online calculator and trained judges and attorneys on the changes to the guideline.
- In FY 2016, CSSD established paternities for 5,623 children born out-of-wedlock, for an overall paternity establishment percentage of 90%.
- In FY 2016, CSSD stepped up its efforts in language access to meet the requirements it faces as a newly designated “agency with major public contact.” All staff members were trained on how to provide services to limited- and non-English proficient customers, the case management system was updated to improve tracking of preferred language, and important documents were translated into frequently used languages.
- In FY 2016, CSSD entered into agreements with local financial institutions so that child support can be collected in cases with past-due obligations. As of the end of January 2017, CSSD had 36 new signed agreements with local financial institutions.
- CSSD celebrated Child Support Awareness Month in August 2016 by partnering with Everyone Wins! DC and distributing 500 books to children who came to CSSD’s waiting room with their parents.
- On February 28, 2017, CSSD will launch a mobile application that customers can download to their smartphones. The app will allow customers to access information on their cases, including payments made, amount due each month, parentage information, appointments, and actions taken on their case by CSSD.

Office of the Solicitor General

The Office of the Solicitor General (OSG) handles all litigation for the Office of the Attorney General in the appellate courts, including the District of Columbia Court of Appeals, the United States Court of Appeals for the District of Columbia Circuit, and the Supreme Court

of the United States. These cases include appeals from trial courts in a wide variety of civil and criminal matters and petitions for review from more than 50 District agencies.

Office of the Solicitor General Highlights

- OSG continues to defend the interests of the District of Columbia in the appellate courts. It continues its astounding win rate of approximately 90 percent.
- Since last year's hearing, OSG has filed briefs and substantive motions or presented oral argument more than 200 times. Moreover, OSG also has provided advice to, and otherwise helped, trial divisions and agencies countless times. For instance, OSG's Criminal and Juvenile Appeals Section has reviewed more than 150 briefs to be filed in the Superior Court by the Public Safety Division. OSG regularly consults with all the other litigating divisions about matters pending before the trial courts, both to share the expertise of its lawyers and to help best position cases before expected appeals.
- OSG has won numerous important cases since the last hearing. Just one example is *American Council for Life Insurers v. D.C. Health Benefit Exchange*. OSG successfully defended against a challenge to the process of acquiring the tens of millions of dollars needed to fund the District's Health Benefits Exchange under the Affordable Care Act. The American Council for Life Insurers brought suit in federal court contending that their members should not have to contribute to funding the Exchange. On appeal to the D.C. Circuit, OSG argued that the Exchange funding was a tax, and therefore had to be challenged in the District's local courts, rather than federal court. The Circuit agreed and dismissed the case.
- OSG also has been working diligently on other civil and criminal appeals that have not yet been decided. These include *District of Columbia v. Wesby*, a case before the Supreme Court concerning whether police have probable cause to arrest partiers in a vacant house when the property owner has expressly stated that no one has a right to be there and whether, even if police were incorrect in their probable-cause determination, they are entitled to qualified immunity. They also include *District of Columbia v. D.C. Public Service Commission*, in which the District (along with the Office of People's Counsel) challenges the decision to approve the Exelon-Pepco merger on terms other than the ones that had been the subject of a settlement agreement between those companies, the District, and other major interests; *Artis v. District of Columbia*, in which opposing counsel petitioned for certiorari after the D.C. Court of Appeals sided with the District on the operation of a tolling provision; and *In re Perrow*, in which OSG is defending the Council's direction that the crime of voyeurism should be prosecuted by OAG rather than the United States Attorney's Office.
- OSG also continues its work defending the District's common sense gun laws in *Wrenn v. District of Columbia* and *Grace v. District of Columbia*. In these cases, the plaintiffs assert that the provision in the District's law that requires an applicant for a concealed-carry license to provide a "good or proper reason" to carry a firearm outside the home

violates the Second Amendment. In both cases, the plaintiffs also sought a preliminary injunction to enjoin enforcement of that requirement. The judge in the *Wrenn* case denied the plaintiffs' motion for a preliminary injunction, while the judge in the *Grace* case granted the plaintiff's motion for a preliminary injunction, enjoining the District from denying concealed-carry licenses to applications who meet all other eligibility requirement but for the "good reason" requirement. Both cases were appealed to the D.C. Circuit, and the parties are awaiting a decision.

Office of Consumer Protection

The Office of Consumer Protection (OCP) was created in November of 2015. Its primary functions are investigating and bringing enforcement actions against individuals and businesses that commit unlawful trade practices that harm District consumers, mediating the consumer complaints it receives, supporting legislation that will protect District consumers, and performing consumer education and outreach so that consumers will be better able to protect themselves.

Office of Consumer Protection Highlights

- During Fiscal Year 2016, OCP received more than 1,200 consumer complaints that it either mediated or referred to the appropriate government agency.
- OCP protected consumers in a number of areas by prosecuting or settling cases against unlawful debt collectors and debt relief agencies, so-called notario fraudsters that provide illegal immigration services, and slumlords providing uninhabitable housing to District residents.
- In multistate actions with other Attorneys General, OCP entered into settlements that should help prevent enrollment abuses in for-profit schools, fraudulent wire transfers, deceptive off-label promotion of pharmaceuticals, data breaches, and deceptive auto sales.
- OAG participated in the drafting and enactment of the Omnibus Public Safety and Justice Amendment Act of 2016, which makes illegal the deceptive offer, sale, and performance of immigration services.
- OCP performed significant consumer outreach throughout the District and has prepared an extensive library of consumer education materials, including pieces that address identity theft, telemarketing scams and student loans.

Key Litigation to Protect District Consumers

Debt Collection

- CashCall, Inc. – CashCall is a debt collector that was collecting interest as high as 169% on consumer loans that were subject to the District’s 24% usury cap. CashCall agreed to entry of a Consent Judgment containing an injunction, is returning more than \$1.8 million to consumers, is writing off existing debt it was collecting in excess of \$1 million, and is paying the District a \$100,000 penalty.
- Fair Collections and Outsourcing – OAG obtained a consent judgment against a debt collector that improperly collected court costs that had not, in fact, been ordered by a court. The debt collector is making full restitution, agreed to pay the District \$45,000 (which may be reduced to \$30,000 if company complies with judgment), and agreed to an injunction.

Housing

- Hofgards – OAG obtained a consent judgment against husband and wife house flippers, who performed substandard and often illegal renovations to homes they sold to consumers. The consent judgment enjoined the Hofgards from further violations and required payment of restitution to consumers totaling at least \$1.3 million and the payment of \$150,000 to the District for its costs.
- Terrace Manor – Terrace Manor is an eleven building apartment complex containing low-income housing. OAG has sued the owners for failing to maintain the property. The parties just negotiated an abatement plan to remediate the property for existing tenants. The parties are still litigating OAG’s consumer protection claims, which seek to impose penalties and recover restitution for tenants forced to live in apartments that were not properly maintained.

Other Cases

- Handy Technologies, Inc. – OAG has a pending lawsuit against a “sharing economy” company that connects consumers with house cleaners and handymen. In the lawsuit, OAG alleges that Handy misrepresented that the cleaners it used were “fully vetted” and “trusted” when, in fact, many had criminal backgrounds and there have been more than 40 instances of theft reported to MPD. The lawsuit also alleges that Handy advertised single cleanings, but enrolled consumers in recurring cleaning plans.
- Unlimited Technologies and Services Corporation – OAG filed a notario fraud lawsuit against the corporation and owner who falsely held themselves out as able to provide legal services and immigration services.

- Washington Sports Clubs – OAG reached a settlement with a large health club operator for misleading consumers regarding cancellation rights and continuing to bill consumers after they cancelled their gym memberships. The settlement contained injunctive relief, required refunds to complaining consumers and required the company to pay a \$20,000 penalty.

Multistate Settlements

- Moody's Corporation – Moody's agreed to a settlement resolving allegations that it violated federal and state consumer protection and securities laws by misrepresenting the independence and objectivity of the ratings it gave to mortgage-backed securities. Structured finance securities backed by subprime mortgages were at the center of the 2008 financial crisis. Moody's agreed to injunctive terms and is paying the District \$6.45 million.
- Volkswagen – A settlement was reached with Volkswagen AG, Audi AG, Volkswagen Group of America, Inc., Porsche AG and Porsche Cars, North America, Inc. (Volkswagen) to resolve allegations that Volkswagen violated District and state consumer protection laws by marketing, selling, and leasing diesel motor vehicles equipped with illegal emission defeat devices. The District was on the executive committee that led the investigation. Volkswagen agreed to an injunction and paid \$2.5 million to the District as a penalty. The District is eligible to receive an additional \$7.5 million for environmental projects, and affected District resident are eligible to receive \$5,000 or they may sell their car back to Volkswagen.
- USA Discounters, Ltd. – USA Discounters agreed to a settlement resolving allegations that it used deceptive techniques to market overpriced household goods and services to service members, and then used illegal debt-collection practices following the sale. The settlement requires the company to forgive nearly \$100 million in existing debts. The company also agreed to pay the District a penalty of more than \$1 million that will likely be discharged in the company's bankruptcy.
- HSBC North America Holdings, Inc. – A settlement was reached with HSBC, through the Department of Justice and Department of Housing and Urban Development, which will provide almost \$60 million in mortgage relief for misconduct related to HSBC's origination and servicing of single family residential mortgages.
- Bristol Meyers Squibb (Abilify) – Bristol Myers Squibb (BMS) agreed to a settlement resolving allegations that it improperly promoted the anti-psychotic drug Abilify for off-label uses. BMS agreed to injunctive relief and paid the District \$386,425.00.
- Education Management Corporation – Education Management Corporation is a large for-profit school that had deceptive enrollment practices, including exaggerating the

employability of its graduates and its graduation rates. Primary relief included debt forgiveness to students and an injunction that set new admissions standards.

- Hyundai Kia – A settlement was reached resolving allegations that Hyundai and Kia gave consumers false fuel economy estimates at a time when gasoline prices in the United States were especially high. Companies agreed to injunctive relief and paid the District \$582,557.92. The company paid restitution to consumers through a separate program.
- MoneyGram – A settlement was reached resolving allegations that MoneyGram knew or should have known that its services were used to perpetrate fraud against consumers and MoneyGram failed to sufficiently warn consumers or take steps to block fraudulent transactions from being processed. Money Gram agreed to injunctive terms, a \$9 million restitution program to repay harmed consumers, and paid the District \$20,000.
- Western Union Company – Western Union agreed to a settlement resolving allegations that it failed to take sufficient steps to block fraudulent wire transfers used to harm consumers. Western Union agreed to injunctive terms, to a \$550 million restitution program to repay harmed consumers, and to pay the District \$42,352.85.

Legal Counsel Division

The Legal Counsel Division (LCD) provides legal advice to the Executive Office of the Mayor, District agencies, OAG, and the Council of the District of Columbia. LCD also reviews draft legislation, rulemakings, Mayor's Orders, and inter-agency memoranda of understanding (MOUs/MOAs) for legal sufficiency; reviews all Council-enrolled bills that are presented to the Mayor for signature; prepares legislation and rulemakings for OAG and other agencies; and prepares opinions, legal memoranda, and letters providing legal advice.

Legal Counsel Division Highlights

- LCD played a vital role in providing impartial legal advice to all parts of the District government, including conducting legal sufficiency reviews of all legislation proposed by the executive and subordinate agencies before they were submitted to the Council, numerous proposed Council bills, and all enrolled bills passed by the Council before they were submitted to the Mayor. In total, LCD has reviewed 956 bills during FY 2016 and 274 thus far in FY 2017. It also reviewed 35 Mayor's Orders in FY 2016 and 12 in FY 2017, 252 Rulemakings in FY 2016 and 132 in FY 2017, and 12 interagency MOUs/MOAs in FY 2016 and 2 in FY 2017. In addition, it provided formal legal advice

in the form of memoranda or letters in response to 243 requests in FY 2016 and 170 in 2017.

- LCD attorneys provided ongoing legal advice to the Advisory Neighborhood Commissions (ANCs) on issues involving legal interpretations of statutes concerning or affecting the ANCs and issues affecting them. LCD advised the ANCs about such issues as the operation of ANC meetings, the lawful use of ANC funds, and an ANC's right to be given notice and great weight with respect to government actions that affect neighborhood planning and development in its ANC area.
- Another of LCD's core functions is to assist District agencies with legal advice on rulemakings. LCD reviewed a huge variety of proposed rulemakings. These included, for example, assisting the Department of Health Care Finance with drafting, reviewing, and promulgating a large number of rules to support the agency's efforts to collect and disburse millions of dollars in Medicaid funds. LCD also assisted the Office of Risk Management in preparing the Public Sector Workers Compensation Program regulations and worked with an interagency team to develop a comprehensive rulemaking proposal to revise the District's sign rules to comply with the Supreme Court's decision in *Reed v. Town of Gilbert*.
- LCD attorneys led or assisted in providing several training sessions for OAG attorneys, agency counsel, and other District employees. These included leading three trainings on appropriations law, a legislative drafting training, a rulemaking training, and a training on the Home Rule Charter. In addition, in conjunction with the Office of Advisory Neighborhood Commission and the Board of Ethics and Government Accountability, an LCD attorney played an important role in a training offered to all the ANC Commissioners. In response to requests from the Mayor's Office of Legal Counsel, LCD plans to offer its rulemaking training again and to participate in a legislation training in 2017.
- LCD offered significant advice on a number of matters designed to advance the cause of District statehood. An LCD attorney served as OAG's representative on the legal group established to advise the Statehood Commission on changes suggested by the public, District officials and Constitutional experts on the New Columbia Constitution. LCD attorneys also assisted the Executive Office of the Mayor by providing a detailed analysis of how the Hatch Act and government ethics laws apply to the efforts of the Mayor and other District employees to participate in and support various statehood activities.
- LCD played an essential role in assisting both the Mayor and Council on significant issues, such as drafting the legislation and regulations needed to amend the District's firearms laws in the wake of the *Palmer* decision. This included preparing an emergency and permanent bill to modify the concealed carry free zone around the White House and Vice President's mansion, acting as counsel to the Concealed Carry Licensing Review Board, and assisting them in developing summary disposition hearing procedures and drafting proposed final orders of appeals. LCD also provided advice on the Stun Gun Amendment Act to permit possession of these devices for self-defense purposes.

Support Services Division

The Support Services Division (SSD) serves as the infrastructure for OAG and provides administrative support to enable the agency to fulfill its legal responsibilities, including investigative services, operational support, agency financial management, emergency preparedness, procurement, and responses to queries or complaints from members of the public.

Support Services Division Highlights

- SSD modernized approximately 80,000 square feet of office space in its sixth, tenth and eleventh floors, including painting, repairing workstations, and replacing carpet where needed.
- SSD processed over 650 procurements — most within seven days of the date of request.
- SSD served over 2,400 summons and subpoenas on witnesses and parties to OAG litigation.
- SSD maximized office space by archiving over 1,000 cubic feet of paper records to the Federal Records Center.

II. Key Community Engagement and Legislative Initiatives

Community Engagement

In Fiscal Year 2016 and Fiscal Year 2017 (to date), OAG's Community Engagement teams have participated in well over 500 community meetings, events, and constituent service actions. OAG's goal is to listen to concerns facing District residents. This feedback has informed the Office's priorities and initiatives. In addition to listening to residents, community engagement is a two-way street that allows OAG to speak to the public. OAG has collaborated with federal, state, and local government agencies, the Executive Office of the Mayor, the Council, and non-profit organizations to develop comprehensive policies, initiatives, and solutions to address recurrent, intractable issues. A few examples of community collaboration include:

- **Criminal Justice in the District Forums:** Partnering with Councilmembers and our federal partners to educate the public on the District’s criminal justice system.
- **Mental Health Panel:** Highlighting District services for those with mental illness, such as community support networks, emergency psychiatric services, court programs designed to help and divert those with mental illness, and options for family members of those suffering from mental illness.
- **Human Trafficking Training:** Teaching students how to identify the signs of human trafficking and teaching community leaders how to lead these trainings.
- **Reentry and Family Reunification Forum:** Discussing the challenges of incarceration and reentry and partnering with local agencies and organizations to provide resources for returning citizens.
- **Consumer Protection Education:** Educating District consumers and vulnerable communities, including seniors and the immigrant community, about how they can avoid scams and what to do if they have fallen victim to one.
- **Financial Literacy Panel:** Sharing expert advice on how to understand finances, avoid financial scams and pitfalls, and protect investments.

Key Legislative Action

Since becoming an independent Office of the Attorney General, our role in proposing legislation is two-fold. Not only do we work with our partners on the Council of the District of Columbia to craft bills that meet our common goals of promoting the public interest, but OAG also drafts and introduced legislation directly for Council consideration. Often, these legislative proposals are drafted after hearing from the community through our community engagement teams or after meeting with advocacy and advisory groups. Several examples of these bills are:

Cracking Down on Synthetic Drugs

- The *Synthetics Abatement and Full Enforcement Drug Control Emergency Amendment Act of 2016* makes important reforms to strengthen law enforcement officials’ ability to test for and prosecute cases against sellers and distributors of synthetic cathinones and cannabinoids. OAG was pleased to work with the Committee on the Judiciary and drug-policy advocates to ensure we crafted a law that keeps our streets safe from high-level distributors, and also makes sure to incorporate our concern that drug users are best addressed in our government’s health cluster agency and not in our criminal justice system. We will continue to work with stakeholders as we craft the permanent version of the legislation.

Fighting Companies that Defraud Immigrant Communities

- The *Immigration Services Protection Act of 2016* passed unanimously and will help protect consumers from “notario fraud,” an illegal practice that misleads consumers seeking immigration services into believing someone is legally able to perform such tasks when in fact they cannot and may make costly or devastating mistakes in immigration matters. This scam often occurs in the context of someone offering immigrant-consultant services, including preparing immigration forms for a fee, after falsely advertising that he or she has the legal authority to do so. In Latin America, notarios are often authorized to practice certain types of law, and some in the District take advantage of this fact by advertising legal services even though they are not authorized to do so in the United States. Many non-citizens pay hundreds of dollars only to find out that they will never obtain a green card, legal immigration status, or other crucial benefits because they received incorrect advice from an unqualified notario fraudster.

Standing Up for Workers’ Rights

- The *Wage Enforcement Initiative Amendment Act of 2016* establishes subpoena power and clarifies the enforcement authority of the Office of the Attorney General to go after employers for failing to pay their workers. It will allow for the recovery of reasonable attorneys’ fees and costs from employers that have illegally withheld wages owed to District workers. As the District’s economy continues to boom, we must protect our workers from “wage theft,” or the practice of denying workers their rightful pay. A 2014 report by the D.C. Employment Justice Center noted that, on average, each low-wage worker loses \$51 per week to wage theft, or \$2,634 per year. Wage Theft also reduces the District’s tax revenues. I want to thank the Council, particularly Councilmember Elissa Silverman, for incorporating these important protections into current law.

Protecting Democracy through Campaign Finance Reform

- The *Campaign Finance Transparency and Accountability Amendment Act of 2016* is legislation that I reintroduced last year. Because voters are tired of the appearance of impropriety, OAG has introduced legislation that strengthens the District’s campaign-finance laws in three ways: 1) ending pay-to-play politics; 2) making political donations transparent; and 3) creating a “bright line” between candidates and Political Action Committees or PACs. Our bill prevents anyone—including corporations—from engaging in major business with the District government for two years after donating to a District political campaign or PAC. This prohibition would preclude campaign donors from receiving large business contracts, major grants, or significant tax breaks from the District. In addition to this proposed legislation, OAG supports a public financing system that would seek to get money out of politics.

- In October 2016, I hosted a forum with Georgetown Law Center to discuss campaign finance in the District. While there were arguments made for keeping the status quo, the overwhelming sentiment was that something needs to be done to remove the appearance of impropriety in contracting and elsewhere through campaign finance reform. I know this is an issue of great importance to Chairman Allen, and I look forward to working with the Committee in the coming months.

III. Actions Related to OAG Priorities

Since becoming Attorney General, I have testified that OAG will prioritize data-driven public safety policies and juvenile justice reform, consumer protection efforts that assist the District's most vulnerable residents, and measures to advance democracy and safeguard public integrity. These are issues that are addressed earlier in my testimony. OAG also prioritizes protecting affordable housing, and instituting policies that will build OAG into a world-class public interest law firm. I am pleased to report that is precisely what OAG's attorneys and staff are doing every day. In the interest of time, I will touch on a few OAG achievements and activities in these areas. Since my testimony already touches on public safety and consumer protection initiatives in previous sections, I will focus on the two other priorities I mentioned. I will once again note that a longer recitation of our actions can be found in our two-year report located on our website and will also be included with my testimony.

Continuing to Build an Exemplary Public Interest Law Firm

OAG competes to recruit and retain talent against both well-heeled law firms throughout the city and with our federal partners on a daily basis. This is why we strongly advocated in last year's budget to offer increases to our employees and put them closer on par with their federal counterparts. OAG greatly appreciates the Council agreeing with our concern and budgeting for pay parity. However, with our exemplary professionals, money is not the singular issue. Many of OAG's employees have a strong desire for public service and look for opportunities for

professional development to not only better themselves but to also achieve better outcomes for District residents. To that end, OAG made a host of in-house and external training opportunities available to line attorneys, administrative professionals, and managers, including courses designed to enhance legal writing and trial skills. For the first time, OAG provided formal paralegal training for our administrative professionals. The feedback we have received from staff has been overwhelmingly positive. We will continue to enhance these professional training opportunities moving forward.

Advancing Democracy

In the wake of President Trump's executive order barring any entry into the United States by lawful permanent residents, temporary residents, visitors, or refugees from seven nations with majority Muslim populations, OAG joined over a dozen other Attorneys General in issuing a statement opposing the ban. Additionally, OAG has joined other Attorneys General in filing *amicus* briefs in several federal courts, arguing that the ban is unconstitutional. It is important to ensure that everyone — including the federal government — obeys the Constitution and does not unlawfully target anyone because of their religion.

Establishing a Public Advocacy Division

While OAG already does significant work on behalf of the public, including public integrity, public nuisance, and affordable housing-related litigation, the lawyers who undertake that work were housed in different divisions, making coordination of these cases difficult. In an effort to build the infrastructure and amplify this work in a strategic manner, OAG is establishing the Public Advocacy Division (PAD).

The Division is modeled on successful divisions in other independently elected attorney general offices, such as New York, Massachusetts, and California, whose affirmative litigation

divisions serve as innovative and aggressive public watchdogs that respond to community concerns with creative and forward-thinking solutions. PAD's two primary areas of subject-matter focus are: (1) litigating cases essential to preserving affordable housing and protecting residents from other abuses such as wage theft; and (2) litigating in an array of public integrity arenas, including false claims, Medicaid fraud, antitrust, nonprofit organization abuses, and tuition fraud. These types of cases are important for District residents, and now there are resources and staff specifically devoted to affirmative litigation.

Conclusion

Thank you for the opportunity to highlight some of the important work of the Office of the Attorney General. We are committed to providing the District with the highest quality legal services and promoting the public interest. It is an honor and privilege to serve the residents as Attorney General. My team and I are pleased to answer any questions that the members of the Committee may have. Thank you.